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# Property

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# Property

## Property; marketable title

Civil Code §1213.5 (repealed); §§880.020, 880.030, 880.240, 880.250, 880.260, 880.310, 880.320, 880.330, 880.340, 880.350, 880.360, 880.370, 882.020, 882.030, 882.040, 884.010, 884.020, 884.030, 885.010, 885.015, 885.020, 885.030, 885.040, 885.050, 885.060, 885.070, 886.010, 886.020, 886.030, 886.040, 886.050 (new).

AB 2416 (McAlister); STATS. 1982, Ch 1268

Support: California Law Revision Commission; Department of Finance; Department of Real Estate

Under prior law, various interests of record created uncertainty in the marketability of title to real property and often appeared to encumber the property even though there was no encumbrance in fact.<sup>1</sup> The objective of Chapter 1268 is to achieve greater marketability of title by removing clouds on title created by obsolete interests of record.<sup>2</sup> Chapter 1268 provides for the removal of a cloud on title created by the recorded interest for (1) ancient mortgages and deeds of trust,<sup>3</sup> (2) unexercised options,<sup>4</sup> (3) powers of termination,<sup>5</sup> and (4) recorded unperformed contracts for sale of real property.<sup>6</sup> Chapter 1268 also provides for the preservation of an interest by recording a notice of intent to preserve the interest.<sup>7</sup>

### *Ancient Mortgages and Deeds of Trust*

Prior to the enactment of Chapter 1268 there was no assurance that real property burdened by a recorded mortgage or deed of trust would be either marketable or insurable, even though the underlying obligation may have been satisfied or the enforcement of the obligation barred by the statute of limitations.<sup>8</sup> Chapter 1268 provides that the lien of a mortgage, deed of trust, or other instrument creating a security

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1. See *Recommendation Relating to Marketable Title of Real Property*, 16 CAL. L. REVISION COMM'N REPORTS 401, 408-409 (1981) [hereinafter cited as *Recommendation*]; see also P. BAYSE, *CLEARING LAND TITLES* §§71-76 (2d ed. 1970).

2. CAL. CIV. CODE §880.020(b); see *Recommendation*, *supra* note 1, at 407-408.

3. See CAL. CIV. CODE §§882.020, 882.030, 882.040.

4. See *id.* §§884.010, 884.020, 884.030.

5. See *id.* §§885.010, 885.015, 885.020, 885.030, 885.040, 885.050, 885.060, 885.070.

6. See *id.* §§886.010, 886.020, 886.030, 886.040, 886.050.

7. See *id.* §§880.310, 880.320, 880.330, 880.340, 880.350, 880.360, 880.370.

8. See *Recommendation*, *supra* note 1, at 408.

interest of record in real property expires at the later of the following times: (1) 10 years after the final maturity date if ascertainable from the record;<sup>9</sup> (2) 60 years after the date the security interest instrument was recorded, if the final maturity date is not ascertainable from the record;<sup>10</sup> or (3) 10 years after the notice is recorded, if notice to preserve the security interest is recorded within the time prescribed in (1) or (2).<sup>11</sup> Chapter 1268 allows the time before an instrument expires to be extended, if the instrument is recorded before the expiration of the prescribed times, for a period not to exceed four years.<sup>12</sup> To automatically clear ancient mortgages and deeds of trust from the record without the necessity of judicial action to quiet title or remove a cloud, Chapter 1268 provides that the expiration of the lien of a mortgage, deed of trust, or other security interest is equivalent to a certificate of satisfaction, reconveyance, or release and that no further action is necessary to terminate or evidence the termination of the security interest.<sup>13</sup> Finally, Chapter 1268 provides that these provisions will not cause the lien of a mortgage, deed of trust, or other security interest in real property to expire or become unenforceable before January 1, 1988.<sup>14</sup>

### *Unexercised Options*

Under prior law, an unexercised option to purchase real property that had been recorded remained a cloud on title to the property for *one year* after the option expired according to its own terms or by operation of law.<sup>15</sup> Prior law further provided that an unexercised option that provided no expiration date according to its terms expired by operation of law within a reasonable time after it was executed.<sup>16</sup> Chapter 1268 specifically repeals the above provisions but continues to allow an option holder adequate time to record an exercise of extension of the option by providing that an option to purchase real property will expire of record *six months* after the option expires, or six months after the instrument creating the option is recorded if no date of expiration is provided.<sup>17</sup> Chapter 1268 then provides that the recorded instrument that

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9. CAL. CIV. CODE §882.020(a)(1).

10. *Id.* §882.020(a)(2).

11. *Id.* §882.020(a)(3).

12. *Id.* §882.020(c); CAL. CIV. PROC. CODE §360.5 (this waiver may be renewed for a further period, not to exceed four years).

13. CAL. CIV. CODE §882.030; *see Recommendation, supra* note 1, at 411.

14. CAL. CIV. CODE §882.040.

15. CAL. STATS. 1965, c. 1948, §1, at 4473 (adding CAL. CIV. CODE §1213.5.); *see Recommendation, supra* note 1, at 412.

16. *See Recommendation, supra* note 1, at 412; 1 B. WITKIN, SUMMARY OF CALIFORNIA LAW, Contracts §129 (8th ed. 1973).

17. CAL. CIV. CODE §884.010.

created or gave constructive notice of the expired option ceases to be notice to any person or to put any person on inquiry with respect to the exercise or existence of the option.<sup>18</sup> By providing for the automatic expiration of an option six months after it is recorded there will be no need for a court determination of the expiration date.<sup>19</sup> Furthermore, the automatic expiration date enables the option holder to be aware of the exact time when notice of exercise or extension of the option must be recorded.<sup>20</sup> Finally, Chapter 1268 provides that an option that expires according to its own terms within one year before, on or within one year after January 1, 1983, will not automatically expire of record until January 1, 1984, and an option that provides no expiration date will not automatically expire of record until January 1, 1988.<sup>21</sup>

### *Powers of Termination*

Chapter 1268 abolishes fees simple determinable and possibilities of reverter.<sup>22</sup> Chapter 1268 provides that every estate that would be a fee simple determinable at common law will be deemed to be a fee simple subject to a condition subsequent, and every estate that would be a possibility of reverter at common law will be deemed to be and is enforceable as a power of termination.<sup>23</sup> Chapter 1268 provides that a power of termination is an interest in real property and defines it as the power to terminate a fee simple estate in real property to enforce a restriction in the form of a condition subsequent to which the fee simple estate is subject, whether the power is characterized as a right of entry or reentry, right of possession or repossession, reserved power of revocation, a possibility of reverter, or otherwise.<sup>24</sup> Chapter 1268 then provides for the expiration of a power of termination at the later of the following times: (1) 30 years after the date the instrument reserving, transferring, or otherwise evidencing the power of termination is recorded;<sup>25</sup> or (2) 30 years after the date a notice of intent to preserve the power of termination is recorded, if the notice is recorded before the power has expired.<sup>26</sup> A provision in the instrument or in another recorded document reserving, transferring, or otherwise evidencing the power of termination can not extend the expiration date provided by

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18. *Id.* §884.020.

19. *See Recommendation, supra* note 1, at 412.

20. *Id.*

21. CAL. CIV. CODE §884.030(b), (c).

22. *Id.* §885.020.

23. *Id.*

24. *Id.* §885.010(a).

25. *Id.* §885.030(a)(1).

26. *Id.* §885.030(a)(2).

Chapter 1268.<sup>27</sup>

Chapter 1268 provides that a power of termination becomes obsolete if (1) the restriction is of no actual and substantial benefit to the holder of the power,<sup>28</sup> (2) enforcement of the power would not effectuate the purpose of the restriction,<sup>29</sup> or (3) it would be otherwise inequitable to enforce the power because of changed conditions or circumstances.<sup>30</sup> Chapter 1268 further provides that a power of termination expires when it becomes obsolete.<sup>31</sup> Chapter 1268 excepts, however, during the life of the grantor, powers of termination arising from a grant by a natural person without consideration to a public entity or to a tax exempt society, corporation, institution, or association.<sup>32</sup> Expiration of a power of termination (1) makes the power unenforceable;<sup>33</sup> (2) is equivalent to a termination of the power of record;<sup>34</sup> (3) terminates the restriction to which the fee simple estate is subject;<sup>35</sup> and (4) makes the restriction unenforceable by any other means, including injunction and damages.<sup>36</sup>

In accord with case law,<sup>37</sup> Chapter 1268 provides that a power of termination can be exercised only by notice or by civil action.<sup>38</sup> Chapter 1268 further provides that if a power of termination is recorded the exercise also must be recorded.<sup>39</sup> Chapter 1268 requires that notice be given, and that any civil action be commenced, within five years after the breach of the restriction to which the fee simple estate is subject.<sup>40</sup> Chapter 1268 allows extension of the period to bring the action by the parties by a waiver or by an extension recorded before the expiration of that period.<sup>41</sup> If a breach of the restriction to which the fee simple estate is subject occurred before January 1, 1983, Chapter 1268 requires the power of termination to be exercised within the earlier of the following periods: (1) at the time that would be applicable pursuant to the law in effect immediately prior to January 1, 1983,<sup>42</sup> or (2) January 1, 1988.<sup>43</sup>

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27. *Id.* §885.030(b).

28. *Id.* §885.040(b)(1).

29. *Id.* §885.040(b)(2).

30. *Id.* §885.040(b)(3).

31. *Id.* §885.040(a).

32. *Id.* §885.040(c).

33. *Id.* §885.060(a).

34. *Id.*

35. *Id.* §885.060(b).

36. *Id.*

37. *See* *Jordan v. Talbot*, 55 Cal. 2d 597, 605, 361 P.2d 20, 24, 12 Cal. Rptr. 488, 492 (1961).

38. CAL. CIV. CODE §885.050.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* §885.070(b)(1).

43. *Id.* §885.070(b)(2).

*Unperformed Contracts for the Sale of Real Property*

Prior to the enactment of Chapter 1268, an unperformed and unreleased contract for the sale of real property continued to impair title and render the property unmarketable and uninsurable until it was eliminated by a release or by proceedings to quiet title.<sup>44</sup> Chapter 1268 eliminates the need for judicial proceedings by defining a contract for sale of real property as an agreement between parties to convey title to real property (1) after the satisfaction of specified conditions set forth in the contract, and (2) within one year of the contract.<sup>45</sup> Additionally, Chapter 1268 provides that a recorded contract for sale of real property expires of record at the later of the following times: (1) five years after the date for conveyance of title provided in the contract;<sup>46</sup> (2) five years after the last date provided in the contract for satisfaction of the specified conditions set forth in the contract, if no date for conveyance of title is provided in the contract;<sup>47</sup> (3) five years after the date for conveyance of title provided in a recorded extension, if the extension is recorded before the expiration of the contract;<sup>48</sup> or (4) five years after the last date provided in the extension for satisfaction of the specified conditions set forth in the contract, if no date for conveyance is provided in the extension.<sup>49</sup> Chapter 1268 then provides that a recorded contract for sale of real property that has expired of record pursuant to this chapter has no effect, and does not constitute an encumbrance or cloud on the title to the real property against any person other than a party to the contract.<sup>50</sup>

Chapter 1268 requires the party to whom title to real property is to be conveyed pursuant to a recorded contract for the sale of real property, who has failed to satisfy the specified conditions set forth in the contract and who does not seek performance of the contract or restitution of amounts paid under the contract, to execute, upon demand, a release of the contract, duly acknowledged for record, to the party who agreed to convey title.<sup>51</sup> Chapter 1268 makes a party to whom title is to be conveyed, who willfully violates these provisions without good cause, liable for resulting damages sustained by the party who agreed

44. A. BOWMAN, 1 OGDEN'S REVISED CALIFORNIA REAL PROPERTY LAW §11.27 (1974); see *Recommendation*, *supra* note 1, at 424.

45. CAL. CIV. CODE §886.010(a).

46. *Id.* §886.030(a)(1).

47. *Id.*

48. *Id.* §886.030(a)(2).

49. *Id.*

50. *Id.* §886.040.

51. *Id.* §886.020.

to convey title.<sup>52</sup> These costs include, but are not limited to, court costs and reasonable attorneys' fees in an action to clear title to the real property.<sup>53</sup> The Legislature apparently intends to enhance marketability of title clouded by an unperformed real property sales contract without the need to quiet title or await the lapse of the five year period.<sup>54</sup> Chapter 1268 provides a two year grace period during which this chapter will not cause a recorded contract for the sale of real property to expire.<sup>55</sup>

### *Preservation of Interests*

Chapter 1268 provides that persons can preserve their interest from expiration by recording a notice of intent to preserve an interest in real property before the interest expires.<sup>56</sup> This recordation creates a presumption that the interest has not been abandoned.<sup>57</sup> Chapter 1268 further provides that recordation of a notice of intent to preserve an interest after the interest has expired does not preserve the interest.<sup>58</sup> Chapter 1268 makes a notice of intent to preserve an interest in real property subject to all statutory requirements for recorded documents and provides a model form for the notice.<sup>59</sup> Chapter 1268 requires that a notice of intent to preserve an interest in real property be recorded in the county where the real property is situated and requires the county recorder to index the notice in the index of grantors and grantees.<sup>60</sup>

Chapter 1268 prohibits the recording of a notice of intent to preserve an interest in real property for the purpose of slandering title to the real property.<sup>61</sup> If a court in an action or proceeding to establish or quiet title determines that a person recorded a notice of intent to preserve an interest for this purpose, Chapter 1268 requires the court to award against the person the damages caused by the recording and the cost of the proceeding, including reasonable attorneys' fees.<sup>62</sup>

Chapter 1268 provides a grace period<sup>63</sup> of five years for the recordation of notice of intent to preserve an interest in real property.<sup>64</sup> If the

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52. *Id.*

53. *Id.*

54. *See Recommendation, supra* note 1, at 425, 448.

55. CAL. CIV. CODE §886.050(b).

56. *Id.* §880.310(a).

57. *Id.* §880.310(b).

58. *Id.* §880.310(a).

59. *Id.* §§880.330, 880.340.

60. *Id.* §§880.350(a), (b).

61. *Id.* §880.360.

62. *Id.*

63. *See Recommendation, supra* note 1, at 436.

64. CAL. CIV. CODE §880.370.

expiration of the period to record the notice of intent to preserve an interest in real property is before, on, or within five years after January 1, 1983, Chapter 1268 extends the period to January 1, 1988.<sup>65</sup>

### Conclusion

Chapter 1268 represents the first legislative attempt in California to achieve greater marketability of title by removing clouds on title created by obsolete interests of record.<sup>66</sup> Chapter 1268 provides for the removal of a cloud on title created by the recorded interest for (1) ancient mortgages and deeds of trust,<sup>67</sup> (2) unexercised options,<sup>68</sup> (3) powers of termination,<sup>69</sup> and (4) recorded unperformed contracts for the sale of real property.<sup>70</sup> Chapter 1268 also provides for preservation of an interest by recording a notice of intent to preserve the interest.<sup>71</sup>

65. *Id.*

66. See *Recommendation*, *supra* note 1, at 407-409. See BAYSE, *supra* note 1, §82.

67. See CAL. CIV. CODE §§882.020, 882.030, 882.040.

68. See *id.* §§884.010, 884.020, 884.030.

69. See *id.* §§885.010, 885.015, 885.020, 885.030, 885.040, 885.050, 885.060, 885.070.

70. See *id.* §§886.010, 886.020, 886.030, 886.040, 886.050.

71. See *id.* §§880.310, 880.320, 880.330, 880.340, 880.350, 880.360, 880.370.

## Property; remedies

Code of Civil Procedure §1174.5 (new).

AB 3552 (Robinson); STATS. 1982, Ch 488

Support: California Apartment Association; Department of Housing and Community Development; State Bar of California

Currently, a forfeiture of a lease<sup>1</sup> for real property<sup>2</sup> under an unlawful detainer judgment<sup>3</sup> occurs only if the landlord has stated an election of forfeiture in a three day notice to the tenant.<sup>4</sup> Prior to the enactment of Chapter 488, however, no provision of law specified that additional remedies were available to a landlord after an unlawful detainer judgment had been entered.<sup>5</sup> In an attempt to clarify the right of a landlord

1. CAL. CIV. PROC. CODE §1174(a) (forfeiture of a lease).

2. CAL. CIV. CODE §658 (definition of real property).

3. CAL. CIV. PROC. CODE §1161 (definition of unlawful detainer).

4. *Id.* §1174(a). The forfeiture of the lease will occur if the unlawful detainer action is based on neglect, failure to perform the conditions or covenants of the lease, or a default in the payment or rent, and the three day notice has complied with the provisions of Civil Procedure Code sections 1161.2, .3. *Id.*

5. See CALIFORNIA STATE BAR, 1981 CONFERENCE RESOLUTION 3-3. *But see* CAL. CIV. CODE §1952(b) (the bringing of an unlawful detainer action does not affect the lessor's right to bring a separate action for damages).



to obtain damages upon a forfeiture,<sup>6</sup> Chapter 488 provides that an unlawful detainer judgment declaring a forfeiture of the lease does not preclude the landlord from seeking indemnification for other specified damages.<sup>7</sup> The specified damages a landlord may seek include the amount of unpaid rent at the time the lease was terminated, unavoidable losses of future rent, and other proximately caused damages.<sup>8</sup>

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6. CALIFORNIA STATE BAR, 1981 CONFERENCE RESOLUTION 3-3. *See generally* Felman, *Hardship and the Decision to Elect a Forfeiture: The Landlords Dilemma*, 55 CAL. STATE B.J. 326 (1980).

7. *See* CAL. CIV. CODE §1951.2; CAL. CIV. PROC. CODE §1174.5.

8. CAL. CIV. CODE §1951.2.

## Property; private land owners' rights of eminent domain

Civil Code §1002 (new); Code of Civil Procedure §1245.326 (new).

SB 1395 (Beverly); STATS. 1982, Ch 1239

Support: County Supervisors Association; Department of Real Estate; League of California Cities

Opposition: Office of Planning and Research

Chapter 1239 provides owners of real property with a method of obtaining a legal right to enter land adjacent to their own in order to make repairs to their property.<sup>1</sup> Existing law permits public entities<sup>2</sup> and "quasi-public entities"<sup>3</sup> to acquire private property for public use through the power of eminent domain.<sup>4</sup> Existing law also provides that private landowners may be deemed a "quasi-public entity" for the purposes of seeking the right of eminent domain to acquire an appurtenant easement in order to provide utility service to their property.<sup>5</sup> Chapter 1239 allows private landowners to be deemed "quasi-public entities" for the purpose of seeking a temporary right of eminent domain to enter adjacent or nearby<sup>6</sup> property in order to make repairs to their land.<sup>7</sup>

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1. *See* Telephone conversation with Brian McMann, Legislative Aide to Senator Beverly (September 10, 1982) (notes on file at the *Pacific Law Journal*).

2. CAL. CIV. PROC. CODE §1235.190 (definition of public entity).

3. *Id.* §1245.320 (definition of "quasi-public entity").

4. *See, e.g., id.* §§1240.010, 1240.020, 1240.040, 1240.350.

5. *Id.* §1245.325.

6. CAL. CIV. CODE §1002(d) (land contiguous with the property needing repair or reconstruction or land through which the party granted temporary access must pass to reach adjacent land).

7. *Id.* §1002(a); CAL. CIV. PROC. CODE §1245.326(a).

Before this right may be granted, however, Chapter 1239 requires that the following conditions exist: (1) there is a necessity to do the repair and a great necessity to enter the adjacent land to do the repair work;<sup>8</sup> (2) the repair work cannot be done safely without entry or the cost of doing the repair work will be substantially higher if the entry is not allowed;<sup>9</sup> (3) the property, if left unrepaired, will adversely affect the community;<sup>10</sup> (4) the hardship to the person seeking to make the repairs, if the entry is not made, outweighs the hardships to the owner of the land being entered;<sup>11</sup> and (5) the person to whom the right of eminent domain is granted uses that right in a way that will cause the least damage to the adjacent property and the least inconvenience to its owner.<sup>12</sup> The legislative body<sup>13</sup> of the community where the property is located must make a statement declaring that all of these conditions have been met before an owner may commence an eminent domain proceeding.<sup>14</sup> Chapter 1239 prohibits entry upon the neighboring land until an eminent domain proceeding has been commenced and the court issues an order permitting entry or renders judgement in the plaintiff's favor.<sup>15</sup>

If the court grants the right of entry, it may require that the entering land owner pay a reasonable rent to his or her neighbor for the use of the land.<sup>16</sup> Furthermore, if the entering land owner fails to restore the adjacent or nearby property to the condition in which it existed prior to entry within a reasonable time set by the court, the court will require that a security deposit be given to the court to cover the costs of these repairs.<sup>17</sup> Finally, the provisions of Chapter 1239 will not apply to entry upon lands used primarily for the commercial production of agricultural and forest products.<sup>18</sup>

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8. CAL. CIV. CODE §1002(a)(1).

9. *Id.* §1002(a)(1)(A).

10. *Id.* §1002(a)(1)(B).

11. *Id.* §§1002(a)(1)(A), (a)(3).

12. *Id.* §1002(a)(2).

13. CAL. CIV. PROC. CODE §1245.310 (definition of legislative body).

14. *Id.* §§1245.326(b), 1245.330.

15. CAL. CIV. CODE §1002(b).

16. *Id.* §1002(c).

17. *Id.* §1002(b). *See generally* CAL. CIV. PROC. CODE §1245.390 (The city will not be held liable for any damages caused).

18. CAL. CIV. CODE §1002(e).

## Property; eminent domain procedures

Civil Procedure Code §§1245.230, 1250.410 (amended); Government Code §7267.2 (amended).

AB 3274 (Brown); STATS. 1982, Ch 1059

Support: Department of Finance; Department of General Services; State Bar Committee on Condemnation

Existing eminent domain statutes govern the procedure for condemnation of private land for public use.<sup>1</sup> Existing law provides that the governing body must first adopt a resolution of necessity, stating that the statutory prerequisites for taking the property have been met before commencing an eminent domain proceeding.<sup>2</sup> Prior to the enactment of Chapter 1059, no amount of compensation had to be established by the public entity<sup>3</sup> before the eminent domain proceedings commenced.<sup>4</sup> Chapter 1059 requires that before either approval of the resolution of necessity or the initiation of negotiations for the acquisition of the property that the public entity must establish an amount of just compensation and make an offer of that amount to the owners of the property.<sup>5</sup> Additionally, Chapter 1059 requires that the resolution of necessity contain a declaration that the offer has been made to the owner.<sup>6</sup> If the public entity determines that the project is an emergency and necessary for the protection or preservation of the public health, safety, welfare, or property, however, a resolution of necessity may be adopted prior to the making of the offer.<sup>7</sup> In these instances the offer must be made within a reasonable time after the adoption of the resolution and in no event later than 90 days after the adoption.<sup>8</sup>

Under existing law, a defendant is entitled to litigation expenses<sup>9</sup> if the court finds that the offer of the plaintiff was unreasonable in comparison to the demand of the defendant.<sup>10</sup> In *State v. Patton Mission*

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1. See generally CAL. CIV. PROC. CODE §§1230.010-1273.010.

2. *Id.* §§1245.220, 1245.230. *Id.* §1235.165 (definition of proceeding).

3. *Id.* §1235.150 (definition of public entity).

4. CAL. STATS. 1978, c. 378, §1, at 1119 (amending CAL. GOV. CODE §7267.2).

5. COMPARE CAL. GOV. CODE §7267.2 with CAL. STATS. 1978, c. 378, §1, at 1119. The offer may be conditioned upon the legislative body's ratification of the offer by execution of a contract of acquisition or adoption of a resolution of necessity or both. CAL. GOV. CODE §7267.2.

6. CAL. CIV. PROC. CODE §1245.230(c)(4).

7. *Id.*

8. *Id.*

9. Litigation expenses include those costs reasonably and necessarily incurred in the proceedings and reasonable attorney and witness fees. *Id.* §1235.140.

10. *Id.* §1250.410.

*Properties, Ltd.*,<sup>11</sup> the court refused to consider the final demand of the defendant in determining the reasonableness of litigation expenses even though it was made one day prior to the expiration of the time limit for filing a final demand.<sup>12</sup> The court held it would be unreasonable to require the city to respond to the demand within the one day remaining.<sup>13</sup> Therefore, the defendants final demand would not be the demand used to determine if the offer of the state was unreasonable, enabling litigation expenses to be awarded.<sup>14</sup> Chapter 1059 specifically provides that a timely offer or demand, that is, an offer made 30 days prior to the date of trial, is to be used in determining the entitlement of litigation expenses.<sup>15</sup> In determining the amount of any award of litigation expenses, Chapter 1059 provides that the court is to consider written offers and demands, including the offer required to be made in the resolution of necessity.<sup>16</sup>

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11. 89 Cal. App. 3d 204, 152 Cal. Rptr. 485 (1979).

12. *Id.* at 212, 152 Cal. Rptr. at 490.

13. *See id.*

14. *Id.*

15. CAL. CIV. PROC. CODE §1250.410(a), (c).

16. *Id.* §1250.410(b).

## Property; *lis pendens*

Code of Civil Procedure §409.8 (new); §409.55 (amended).

AB 3618 (Kapiloff); STATS. 1982, Ch 560

Support: County Recording Association; San Diego County Bar Association; State Bar of California

Existing law provides that a plaintiff in an action concerning the right, title, interest, or possession in real property may record a notice that the action is pending.<sup>1</sup> The effect of this recordation is to provide constructive notice of the pendency of an action and to warn prospective purchasers not to attempt to acquire an interest in the property.<sup>2</sup> Prior to the enactment of Chapter 560, this notice of pendency, known as a *lis pendens*,<sup>3</sup> could be withdrawn only by the joint agreement of the party who filed the notice and the party against whom the notice was filed.<sup>4</sup> Prior law also stated that the withdrawal of the *lis pendens* must be accompanied by a dismissal of the cause of action concerning the

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1. *See* CAL. CIV. PROC. CODE §409(a).

2. 2 B. WITKIN, CALIFORNIA PROCEDURE, *Actions*, §206 (2d ed. 1970).

3. *See id.* (definition of *lis pendens*).

4. CAL. STATS. 1980, c. 307, §1, at 633 (enacting CAL. CIV. PROC. CODE §409.55).

real property.<sup>5</sup> This provision was added at the request of title insurance companies to avoid any liability that might result from actual knowledge of the pending action.<sup>6</sup>

Under Chapter 560, the *lis pendens* may be withdrawn *solely* by the action of the party who filed the notice or by the party's successor in interest.<sup>7</sup> Chapter 560 also allows withdrawal of the *lis pendens* without dismissal of the underlying cause of action<sup>8</sup> but enacts provisions to protect against liability that arises from actual knowledge of the cause of action.<sup>9</sup>

Chapter 560 states that, after withdrawal or expungement<sup>10</sup> of a notice of pendency and prior to the recording of judgment, only a nonfictitious party to the cause of action is deemed to have actual knowledge of the action.<sup>11</sup> In order to provide for free transferability of real property, a purchaser, transferee, mortgagee, or other encumbrancer<sup>12</sup> of an interest in real property who is not a party to the action is deemed not to have actual knowledge of the action even if that person possesses actual knowledge.<sup>13</sup>

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5. *Id.*

6. STATE BAR OF CALIFORNIA, 1981 CONFERENCE RESOLUTION 3-1.

7. *See* CAL. CIV. PROC. CODE §409.55.

8. *Compare id.* with CAL. STATS. 1980, c. 307, §1, at 633.

9. *See* CAL. CIV. PROC. CODE §409.8; *see also* STATE BAR OF CALIFORNIA, 1981 CONFERENCE RESOLUTION 3-1.

10. *Id.* §§409.1, 409.2 (definition of expungement).

11. *See id.* §409.8.

12. *See* CAL. CIV. CODE §1114 (defines incumbrances to include taxes, assessments, and all other liens on real property).

13. CAL. CIV. PROC. CODE §409.8.

## Property; planning and zoning

Government Code §§65750, 65751, 65752, 65753, 65754, 65755, 65756, 65757, 65758, 65759, 65760, 65761 (new); §65361 (amended). AB 1612 (Berman); STATS. 1982, Ch 27

Support: California Rural Legal Assistance; Department of Housing and Community Development; Western Center on Law and Poverty  
Opposition: Office of Planning and Research

The Planning and Zoning Law<sup>1</sup> requires every city or county<sup>2</sup> to

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1. CAL. GOV'T CODE §65000 (short title). *See generally id.* §§65000-66403.

2. "City or county" as used in this text includes city, county, or city and county. *See* CAL. GOV'T CODE §§65750, 65754, 65755, 65757, 65760.

adopt a general plan for its physical development.<sup>3</sup> The plan must comprise an integrated, internally consistent,<sup>4</sup> and compatible statement of development policies.<sup>5</sup> Existing law specifies elements that either may be included<sup>6</sup> or must be included in the plan.<sup>7</sup> Chapter 27 declares that there is a housing crisis and accordingly enacts provisions to expedite the judicial review of challenges to a general plan<sup>8</sup> and to curtail the unnecessary delay of construction of needed housing.<sup>9</sup>

### *Judicial Review Procedures*

Existing law states that the review of an adoption or amendment of the general plan must be made pursuant to a writ of mandate.<sup>10</sup> Similarly, Chapter 27 specifically designates that a writ of mandate is to be used to challenge the conformity of a general plan or its elements with the requirements of the Planning and Zoning Law.<sup>11</sup> Chapter 27 expedites judicial review and deters actions that will not be promptly pursued by providing that if the petitioner does not request a hearing within 90 days of filing the petition for a writ of mandate, the court may, on its own motion or an interested party's motion, dismiss the petition.<sup>12</sup>

To further expedite judicial review, Chapter 27 permits court actions challenging the adequacy of a general plan or their appeals to be heard before all other civil proceedings.<sup>13</sup> In addition, Chapter 27 specifically provides that the court may order a reference if necessary to assist in the litigation.<sup>14</sup> Finally, Chapter 27 requires that the findings must be

3. *Id.* §65300.

4. See generally Di Mento, *Developing the Consistency Doctrine: The Contribution of the California Courts*, 20 SANTA CLARA L. REV. 285 (1980).

5. CAL. GOV'T CODE §65300.5.

6. See *id.* §65303. The permitted elements are as follows: recreation; circulation that supplements the mandatory circulation element; transportation; transit; public services and facilities; public building; community design; housing consisting of standards and plans for elimination of substandard dwelling conditions; redevelopment; historical preservation; and any additional elements dealing with other subjects that relate to the physical development of the city or county.

7. See *id.* §65302. The mandatory elements are as follows: land use, circulation, housing, conservation, open-space, seismic safety, noise, scenic highway, and safety.

8. See *id.* §§65750, 65751, 65752, 65753, 65756.

9. *Id.* §65750. Construction is delayed if a court issues injunctions to restrain construction or enjoins the issuance of all building permits until an adequate general plan is adopted. See, e.g., 58 OP. ATT'Y GEN. 21, 22 (1975); *Save El Torro Ass'n v. Days*, 74 Cal. App. 3d 64, 75, 141 Cal. Rptr. 282, 288 (1977).

10. CAL. GOV'T CODE §65301.5. See generally CAL. CIV. PROC. CODE §§1084 (writ of mandamus denominated writ of mandate), 1085 (purpose of a writ of mandate).

11. CAL. GOV'T CODE §65751. The use of a writ of mandate was already the procedure to challenge a housing element. See *id.* §65587.

12. CAL. GOV'T CODE §65753.

13. *Id.* §65752.

14. *Id.* §65756; see CAL. CIV. PROC. CODE §639 (specifies when a reference is appropriate).

reported to the court within 90 days of the reference.<sup>15</sup>

### *Compliance Procedures*

If the court, in a final judgment, finds that the general plan or any of the mandatory elements contained within it, does not conform to the requirements of the Planning and Zoning Law, Chapter 27 mandates that the city or county bring the nonconformity into compliance within 120 days.<sup>16</sup> Although Chapter 27 permits the city or county two extensions of time for good cause, the extensions cannot exceed a total of 240 days.<sup>17</sup>

Existing law requires a city or county to submit a draft of a housing element or an amendment to the Department of Housing and Community Development (hereinafter referred to as Department) for review and recommendations.<sup>18</sup> A draft for adoption must be submitted at least 90 days prior to the adoption date and the Department must review it within this period.<sup>19</sup> When a housing element is being proposed to comply with a judicial decision, however, Chapter 27 requires that the element be submitted at least 45 days prior to adoption.<sup>20</sup> Correspondingly, the Department must review the submitted element and report its findings to the planning agency within 45 days of receipt.<sup>21</sup>

Existing law limits the number of amendments to mandatory elements of a general plan to three per year.<sup>22</sup> Chapter 27 exempts an amendment from this provision, however, if the amendment is necessary to comply with a judicial decision.<sup>23</sup>

### *Interim Measures*

Until conformity with the Planning and Zoning Law is effected, the court must include in all its decisions at least one of the six interim measures provided by Chapter 27.<sup>24</sup> The following three of the six measures are used to ensure compliance: (1) suspend the authority of

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15. CAL. GOV'T CODE §65756.

16. *Id.* §65754(a).

17. *Id.* §65759(2).

18. *Id.* §65585(b).

19. *Id.*

20. *Id.* §65754(a).

21. *Id.*

22. *Id.* §65361(a). Amendments are limited to insure public participation in the process by restricting the number of times people will need representation and consequently reducing the burdens and limiting the costs. *Karlson v. City of Camarillo*, 100 Cal. App. 3d 789, 808, 161 Cal. Rptr. 260, 271 (1980).

23. CAL. GOV'T CODE §65361(b). Compare *id.* with CAL. STATS. 1981, c. 303, §1, at — (amending CAL. GOV'T CODE §65361) (establishing the exemption).

24. CAL. GOV'T CODE §65755 (lists the six measures).

the city or county to issue any or all categories of building permits and all other related permits;<sup>25</sup> (2) suspend the authority of the city or county to grant zoning changes;<sup>26</sup> or (3) suspend the authority of the city or county to grant subdivision map approvals.<sup>27</sup> Additionally, when there will be no damaging impact on an adequate housing element,<sup>28</sup> one of the remaining three interim measures may be used by the court to insure that construction will proceed: (1) mandate the approval of building permits for residential housing;<sup>29</sup> (2) mandate the approval of final subdivision maps;<sup>30</sup> (3) mandate the approval of tentative subdivision maps if certain requirements are met.<sup>31</sup> Chapter 27 protects construction in progress by expressly forbidding the revocation of building permits issued prior to the filing of the court action.<sup>32</sup>

Since there is a housing crisis,<sup>33</sup> the court should not enjoin any housing project that complies with the law and may be developed without impacting on the ability to adopt and implement an adequate housing element.<sup>34</sup> Accordingly, Chapter 27 provides that any of the authorized relief<sup>35</sup> may also be granted during the pendency of the court action if there is probable success on its merits.<sup>36</sup> When temporary relief is granted, Chapter 27 provides that, within 30 days of the issuance of a temporary order, either party may request that the court enter a judgment on the merits of the case within 180 days from the date of the request.<sup>37</sup>

### *Conformity of Zoning Ordinance*

When a zoning ordinance becomes inconsistent with the general plan, existing law requires the city or county to bring it into conformity within a reasonable time.<sup>38</sup> Chapter 27 establishes that after a court decision, a reasonable time to conform the zoning ordinance to the general plan is within 120 days.<sup>39</sup>

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25. *Id.* §65755(1).

26. *Id.* §65755(2).

27. *Id.* §65755(3).

28. *Id.* §§65755(4), (5), (6).

29. *Id.* §65755(4).

30. *Id.* §65755(5).

31. *Id.* §65755(6).

32. *See id.* §65761.

33. *See id.* §65750.

34. *Id.* §§65757, 65760 (method to determine impact); *see also id.* §§65755(4), (5), (6)(C).

35. *See id.* §65755.

36. *Id.* §65757.

37. *Id.* §65758.

38. *Id.* §65860(c).

39. *Id.* §65754(b). *Compare id. with id.* §65860(c) (reasonable time limit set).



### Conclusion

Chapter 27 specifies the method for judicial review<sup>40</sup> and provides expediency provisions for challenges to the general plan of a city or county for physical development.<sup>41</sup> Additional provisions expedite adoption or amendment of a general plan after a court decision has been rendered.<sup>42</sup> Furthermore, Chapter 27 establishes interim measures designed either to ensure compliance with a court decision<sup>43</sup> or to permit construction to proceed if it will not impact on an adequate housing element.<sup>44</sup> Finally, Chapter 27 requires a city or county to bring its zoning ordinances into conformity with the recently adopted or amended general plan within 120 days.<sup>45</sup>

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40. See *id.* §65751.

41. See *id.* §§65750, 65751, 65752, 65753, 65756.

42. See *id.* §65754.

43. See *id.* §§65755(1), (2), (3).

44. See *id.* §§65755(4), (5), (6).

45. *Id.* §65754(b).

### Property; copyright

Business and Professions Code §§14700, 14701, 14702, 14703, 14720, 14740 (repealed); Civil Code §§ 980, 981, 982, 983 (amended).

AB 3483 (Katz); STATS. 1982, Ch 574

Support: Department of Finance; State Bar Patent, Trademark, and Copyright Section

The National Copyright Act of 1976<sup>1</sup> created a unitary system of national copyright law and expressly preempted state common and statutory copyright law relating to works fixed in a tangible medium of expression.<sup>2</sup> In recognition of this federal preemption, Chapter 574 removes various state laws<sup>3</sup> that are superseded by the National Copyright Act and amends existing law to protect works not specifically protected under federal law.<sup>4</sup>

Prior California law provided for the filing<sup>5</sup> and recordation<sup>6</sup> of orig-

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1. 17 U.S.C. §§101-810 (1976 & Supp. IV 1980).

2. See Parris, *The Copyright Revision Act of 1976: An Overview*, 52 LOS ANGELES BAR JOURNAL 564, 565 (1977); 17 U.S.C. §101 (Supp. IV 1980) (guidelines to determine when a work is fixed in a tangible medium of expression).

3. CAL. STATS. 1982, c. 574, §1, at — (repealing CAL. BUS. & PROF. CODE §§14700-14740).

4. Compare CAL. CIV. CODE §§980-983 with 17 U.S.C. §301 (1976).

5. CAL. STATS. 1941, c. 1120, §1, at 2834 (amending CAL. BUS. & PROF. CODE §14700).

6. CAL. STATS. 1941, c. 60, §1, at 716 (adding CAL. BUS. & PROF. CODE §14701).

inal works of authorship<sup>7</sup> and established penalties for the unauthorized performance or sale of unpublished or copyrighted operas.<sup>8</sup> Additionally, any person who published or sold copyrighted musical compositions without the consent of the copyright owner was guilty of a misdemeanor.<sup>9</sup> This state law is repealed by Chapter 574, since these subjects are provided for in the National Copyright Act.<sup>10</sup> Correspondingly, Chapter 574 deletes state provisions dealing with (1) the ownership rights of an author in a composition of arts or letters,<sup>11</sup> (2) the proportional ownership rights of persons jointly concerned in the creation of those works,<sup>12</sup> (3) the transfer of ownership rights in original works,<sup>13</sup> and (4) the ability of people to use a work without responsibility to the owner after the work has been published.<sup>14</sup>

Additionally, Chapter 574 provides protection for works of authorship not protected under federal law.<sup>15</sup> Chapter 574 grants exclusive ownership rights to authors of works *not* fixed in any tangible medium of expression.<sup>16</sup> Chapter 574 states that if a work is *not* fixed in a tangible medium of expression and several persons are jointly concerned in its creation, then the work is to be owned in equal shares, unless otherwise agreed by the parties.<sup>17</sup> Furthermore, Chapter 574 allows the transfer of any ownership interest in an original work not fixed in a tangible medium of expression.<sup>18</sup> Finally, Chapter 574 affords exclusive ownership rights to sound recordings initially fixed in a tangible medium of expression prior to February 15, 1972 until February 15, 2047, the effective date of protection for those recordings under federal law.<sup>19</sup>

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7. CAL. STATS. 1941, c. 1120, §1, at 2834 (original works of authorship include lectures, sermons, stories, radio scripts and programs, movie scenarios, addresses, and dramatic compositions).

8. CAL. STATS. 1941, c. 60, §1, at 716 (adding CAL. BUS. & PROF. CODE §14720).

9. *Id.* at 717 (adding CAL. BUS. & PROF. CODE §14740).

10. *See* 17 U.S.C. §102 (1976).

11. *Compare* CAL. CIV. CODE §980(a) with CAL. STATS. 1949, c. 921, §1, at 1686 (amending CAL. CIV. CODE §980).

12. *Compare* CAL. CIV. CODE §981(a) with CAL. STATS. 1949, c. 921, §1, at 1686 (amending CAL. CIV. CODE §981(a)).

13. *Compare* CAL. CIV. CODE §982(a) with CAL. STATS. 1975, c. 952, §1, at 2128 (amending CAL. CIV. CODE §982).

14. *Compare* CAL. CIV. CODE §983 with CAL. STATS. 1949, c. 921, §4, at 1686 (amending CAL. CIV. CODE §983).

15. *Compare* CAL. CIV. CODE §980 with 17 U.S.C. §§102, 103, 301(c) (1976).

16. CAL. CIV. CODE §980(a)(1). A work not fixed in tangible medium of expression is one that is not sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration, either directly or with the aid of a machine or device.

17. *Id.* §981(a).

18. *Id.* §982(a).

19. *Id.* §980(a)(2); 17 U.S.C. §301(c)(1976).

## Property; mobilehomes

Civil Code §798.87 (new); 798.8, 798.9, 798.11, 798.12, 798.15, 798.18, 798.19, 798.25, 798.26, 798.27, 798.28, 798.30, 798.31, 798.32, 798.33, 798.34, 798.35, 798.36, 798.37, 798.38, 798.50, 798.51, 798.55, 798.56, 798.58, 798.59, 798.70, 798.72, 798.73, 798.74, 798.77, 798.78, 798.79, 798.86 (amended); Government Code §65863.8 (new and repealed).

AB 1324 (Floyd); STATS. 1982, Ch 1392

Support: Department of Housing and Community Development; Golden State Mobilehome Owners League

Opposition: Western Mobilehome Association

AB 2429 (Cortese); STATS. 1982 Ch 1397

Support: Department of Finance; Department of Housing and Community Development; Golden State Mobilehome Owners League

Chapters 1392 and 1397 make various changes to the Mobilehome Residency Law.<sup>1</sup> Chapter 1392 authorizes public nuisance actions against mobilehome park owners who fail to maintain the park's common facilities and against homeowners who violate the park rules.<sup>2</sup> Chapter 1397 makes related changes affecting the circumstances that allow the management of a mobilehome park to terminate a homeowner's tenancy as a result of repeated violations of a rule or regulation<sup>3</sup> or in the event of a sale of the mobilehome to a third party.<sup>4</sup> Chapter 1397 also changes the designation of "tenant" to "homeowner" throughout the Mobilehome Residency Law.<sup>5</sup>

Existing law requires the management of a mobilehome park to provide and maintain physical conditions in the common facilities.<sup>6</sup> Chapter 1392 establishes that the management's failure to maintain the common facilities in good working condition constitutes a public nuisance.<sup>7</sup> By classifying the violation as a public nuisance, either a private person or a public officer may initiate an action against the mobilehome park owner.<sup>8</sup> Furthermore, Chapter 1392 provides that

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1. CAL. CIV. CODE §798 (short title). *See generally id.* §§798-799.6.

2. *See id.* §798.87.

3. *See id.* §798.56.

4. *See id.* §798.73.

5. *See generally id.* §§798-799.6.

6. *Id.* §798.15(d).

7. *Id.* §§798.87(a), 3479 (definition of nuisance), 3480 (public nuisance).

8. *See id.* §§3493, 3494, 3495.

any violation of a mobilehome park rule will also be deemed a public nuisance.<sup>9</sup> Although other public nuisance actions may be remedied by indictment, civil action, or abatement,<sup>10</sup> Chapter 1392 specifically excludes criminal proceedings for these types of nuisance actions by stating that the only remedies available are a civil action or abatement.<sup>11</sup>

Existing law delineates specific circumstances that allow the management of a mobilehome park to terminate a homeowner's tenancy.<sup>12</sup> One instance is a homeowner's failure to comply with a reasonable rule or regulation that is included in the rental agreement or any amendment of that agreement.<sup>13</sup> Existing law requires that the management give the homeowner written notice of the alleged violation and permits eviction only if the homeowner fails to adhere to the rule or regulation within seven days of the notice.<sup>14</sup> Chapter 1397, however, specifies that the management may evict without giving prior written notice if notice of an alleged violation of the same rule or regulation has already been given to the homeowner three or more times within a 12 month period.<sup>15</sup> The management, however, must still demonstrate that a rule or regulation was actually violated before eviction.<sup>16</sup>

Existing law contains provisions that authorize the management of a mobilehome park, in order to upgrade the park, to require removal of a mobilehome during the term of the rental agreement if the homeowner sells the mobilehome to a third party.<sup>17</sup> One provision specifies that a mobilehome less than 20 feet wide may be removed if it is over 17 years old or 25 years old if manufactured after September 15, 1971.<sup>18</sup> A mobilehome that is at least 20 feet wide may be removed if it is over 20 years old, or 25 years old if manufactured after September 15, 1971.<sup>19</sup> Chapter 1397 additionally provides that the management cannot require removal of a mobilehome pursuant to either of these provisions unless the mobilehome does not comply with certain construction and safety standards of the Health and Safety Code.<sup>20</sup> Prior law authorized

9. *Id.* §798.87(b).

10. *Id.* §3491.

11. *Id.* §798.87.

12. *Id.* §798.56 (authorized reasons for termination of tenancy).

13. *Id.* §798.56(c).

14. *Id.*

15. Compare *id.* with CAL. STATS. 1981, c. 458, §1, at — (amending CAL. CIV. CODE §798.56).

16. CAL. CIV. PROC. CODE §798.56(c).

17. *Id.* §798.73.

18. *Id.* §798.73(c).

19. *Id.* §798.73(b).

20. Compare CAL. CIV. CODE §§798.73(b), (c) with CAL. STATS. 1978, c. 1034, §2, at 3194 (enacting CAL. CIV. CODE §798.73). The sections of the Health and Safety Code that must be complied with are the following: §18550 (specifying unlawful uses of mobilehomes), §18552 (authority to regulate accessory buildings or structures), and §18605 (use and occupancy regulations). CAL. CIV. CODE §§798.73(b), (c).

the removal of a mobilehome if it was in a rundown condition or in disrepair.<sup>21</sup> Chapter 1397 now requires that the mobilehome be in a *significantly* rundown condition or in disrepair before removal will be authorized.<sup>22</sup> Chapter 1397 also requires that the disrepair be determined by the general condition of the mobilehome and its acceptability to the health and safety of the occupants and the public.<sup>23</sup> Furthermore, Chapter 1397 states that the management must bear the burden of demonstrating that the mobilehome is in a significantly rundown condition or in disrepair.<sup>24</sup>

Finally, Chapter 1397 changes the classification of "tenant" to "homeowner" in the Mobilehome Residency Law.<sup>25</sup> This substitution is declaratory of existing law and is not intended to modify the law.<sup>26</sup>

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21. CAL. STATS. 1978, c. 1034, §2, at 3194.

22. Compare CAL. CIV. CODE §798.73(c) with CAL. STATS. 1978, c. 1034, §2, at 3194.

23. *Id.*

24. *Id.* §798.73(d).

25. See generally *id.* §§798-799.6.

26. CAL. STATS. 1982, c. —, §36, at —.

## Property; transfers of water and water rights

Water Code §§380, 381, 382, 383, 384, 385, 386, 387, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442 (new); §§109, 1010, 1011, 1427 (amended).

AB 3491 (Katz); STATS. 1982, Ch 867

Support: Department of Finance; Department of Water Resources; State Water Resources Control Board

In an effort to promote the conservation and efficient use of water,<sup>1</sup> the Legislature has declared the need for certainty in the definition of rights to water use and the transferability of those rights.<sup>2</sup> The Legislature also established the state policy of facilitating the voluntary transfer of water and water rights, when consistent with the public welfare.<sup>3</sup> Chapter 867 directs all appropriate state agencies with authority over water and water rights to encourage voluntary transfers of water rights by providing assistance in the development of water conservation programs that can make more water available for transfer.<sup>4</sup>

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1. See generally CAL. WATER CODE §§109, 1010, 1011.

2. See *id.* §109(a).

3. *Id.*

4. *Id.* §109(b).

*Authority of Local or Regional Agencies*

Chapter 867 declares that since the water needs of the state differ widely among the various regions of the state<sup>5</sup> and regional differences affect the decisions regarding water allocations,<sup>6</sup> many water management decisions regarding the maximization of efficient water use can best be made at the local or regional level.<sup>7</sup> Chapter 867 gives local or regional public water agencies the authority to sell, lease, exchange, or otherwise transfer water that is surplus<sup>8</sup> to the needs of the water users of the agency for use outside of the agency.<sup>9</sup> Chapter 867, however, requires that these agencies comply with all general laws of the state relating to the transfer of water or water rights prior to serving water to any person for use outside of the jurisdiction of the agency.<sup>10</sup> Chapter 867 also forbids the transfer of water for use within the boundaries of another local or regional water agency that furnishes the same water service to the transferee without first gaining the consent of the agency.<sup>11</sup>

Under existing law, the cessation of or reduction in the use of water under any existing right as the result of (1) water conservation efforts,<sup>12</sup> (2) the use of reclaimed water,<sup>13</sup> or (3) the use of water polluted by waste<sup>14</sup> to a degree that affects its useability for other beneficial uses,<sup>15</sup> is deemed a reasonable beneficial use of water,<sup>16</sup> to the extent of the cessation or reduction in use.<sup>17</sup> No lapse, reduction, or loss of any existing right will occur under these conditions.<sup>18</sup> Chapter 867 provides that the water, or the right to the use of water, saved as a result of these conservation methods may be sold, leased, exchanged, or otherwise transferred pursuant to statutory provisions relating to the transfer of

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5. *Id.* §380(a).

6. *Id.* §380(b).

7. *Id.* §380(c).

8. *See id.* §383. Surplus water is defined as water to which the right is held by a local or regional agencies that is determined to be in excess of the needs of water users within the agency for the duration of the transfer, water controlled by an agency but used by another who agrees with an agency to forego use for the duration of the transfer, or water to which the right is held by a water user who agrees with an agency to forego use for a specified period of time and to permit the agency to act as agent for the water user to effect the transfer. *See id.*

9. *Id.* §382 (this authority does not restrict or prohibit the transfer of water or water rights by these agencies pursuant to authority granted by other legislative enactments).

10. *Id.* §384.

11. *Id.* §385.

12. *See id.* §1011(a) (definition of water conservation).

13. *See id.* §§1010(a), 13050(n) (definition of reclaimed water).

14. *Id.* §13050(l) (definition of polluted water).

15. *Id.* §1010(a).

16. *See id.* §13050(f) (definition of a beneficial use).

17. *See id.* §§1010(a), 1011(a).

18. *Id.*

water or water rights.<sup>19</sup>

Transfers of water or water rights may be approved by the State Water Resources Control Board (hereinafter referred to as the Board) only if it determines that the change can be made without injuring legal users of the water or unreasonably affecting the environment or economy of the area from which the water is being transferred.<sup>20</sup> The reasonable costs of the evaluation and processing of a petition to transfer water or water rights by the Board will be paid by the petitioner.<sup>21</sup>

Chapter 867 limits the period of time that water may be transferred to seven years.<sup>22</sup> An exception, however, exists for water made available through reclamation or conservation methods; this water may be transferred for any period of time agreed upon by the agency and the transferee.<sup>23</sup>

### *Temporary Urgency Changes*

Chapter 867 grants to the Board the authority to issue a conditional and temporary change order requested by any permittee or licensee of water rights relating to a point of diversion, place of use, or purpose of use,<sup>24</sup> when it is necessary to meet emergency conditions<sup>25</sup> and the change can be made without injury to the rights of other users<sup>26</sup> or the environment.<sup>27</sup> The determination of these matters can be made only after a review of records relating to the legal rights of other water users, consultation with the Department of Fish and Game, and, if necessary, a field investigation.<sup>28</sup> The petition for a temporary change order will be carried out in accordance with the rules of the Board,<sup>29</sup> including those relating to notice.<sup>30</sup> Once the order is granted, Chapter 867 requires the Board to supervise the use of water under the order and protect the vested rights of other water users.<sup>31</sup>

A temporary change order issued by the Board under this legislation is not to be construed as the creation of a vested water right in the

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19. *Id.* §§1010, 1011.

20. *Id.* §386.

21. *Id.*

22. *Id.* §387.

23. *Id.*

24. *Id.* §1435(a).

25. *Id.* §1435(c) (emergency conditions exist when there have been unexpected circumstances requiring immediate action to change a point of diversion, place of use, or purpose of use so as to protect the public health, welfare, or safety).

26. *Id.* §1435(a), (b).

27. *Id.* §1435(a).

28. *Id.* §1437.

29. *Id.* §1436.

30. *Id.* §1438(a). *See generally id.* §1438(b) (notice requirements).

31. *Id.* §1439.

person requesting the order.<sup>32</sup> The order will automatically expire at the end of 180 days, unless an earlier date is specified, the order is revoked by the Board,<sup>33</sup> or the order is renewed by Board action.<sup>34</sup>

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32. *Id.* §1440.

33. *Id.*

34. *Id.* §1441.



